
**APPEALS BOARD
UTAH LABOR COMMISSION**

TERESITA A. DRAKE,

Petitioner,

vs.

**KIMBERLY CLARK and
SENTRY INSURANCE,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 03-0868

Kimberly Clark and Sentry Insurance (referred to jointly as “Kimberly Clark” hereafter), ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to Teresita A. Drake under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12, § 34A-3-102(2) and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mrs. Drake claims occupational disease benefits for asthma allegedly caused by her work at Kimberly Clark. After an evidentiary hearing, the medical aspects of Mrs. Drake's claim were referred to an impartial medical panel. The medical panel concluded that Mrs. Drake did, in fact, suffer from occupational asthma caused by exposures to respirable substances used in Kimberly Clark's manufacturing processes. Judge Lima accepted the panel's opinion and awarded benefits to Mrs. Drake.

In challenging Judge Lima's decision, Kimberly Clark argues that: 1) Judge Lima's findings of fact are insufficient; 2) Judge Lima erred in relying on the medical panel's opinion; 3) the preponderance of evidence does not support a finding that Mrs. Drake's work at Kimberly Clark caused her asthma; and 4) Mrs. Drake's compensation should be apportioned between occupational and non-occupational factors.

FINDINGS OF FACT

The Appeals Board affirms and adopts Judge Lima's findings of fact. As material to the issues raised by Kimberly Clark's motion for review, those facts can be summarized as follows.

Mrs. Drake began working at Kimberly Clark's disposable-diaper factory in 1986. During the course of her employment there, she was exposed to low levels of respirable “SAM,” a super-

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absorbent polyacrylate, and cellulose pulp. As early as 1992, Mrs. Drake began experiencing respiratory problems. She was first diagnosed with allergies, then intrinsic asthma triggered by dust exposure at work, among other things. She was referred to a pulmonary specialist, Dr. Josepn Anderson, who diagnosed her with occupational asthma related to material inhaled at work. Dr. Anderson recommended that Mrs. Drake change jobs. On May 7, 2003, Mrs. Drake quit her job with Kimberly Clark.

Kimberly Clark subsequently engaged Dr. Holmes, a specialist in occupational medicine, to evaluate Mrs. Drake's condition. Dr. Holmes concluded that Mrs. Drake's asthma was not caused by her work at Kimberly Clark but was attributable to Mrs. Drake's personal circumstances. However, Dr. Holmes did view Mrs. Drake's work at Kimberly Clark as temporarily exacerbating her underlying asthma.

In light of Dr. Holmes and Dr. Anderson's conflicting opinions, Judge Lima appointed Dr. Jarvis, also a specialist in occupational medicine, to serve as an impartial medical panel in this matter.¹ Judge Lima provided Dr. Jarvis with her preliminary findings setting forth the underlying facts regarding Mrs. Drake's claim for occupational disease benefits. Dr. Jarvis then reviewed all Mrs. Drake's medical records and the opinions of other medical experts who had treated or examined her. Dr. Jarvis also personally examined Mrs. Drake. Based on all this information, Dr. Jarvis concluded that Mrs. Drake's asthma was caused by her work exposures at Kimberly Clark.

Kimberly Clark objected to Dr. Jarvis's opinion. Judge Lima asked Dr. Jarvis to consider Kimberly Clark's objections and then respond. Dr. Jarvis then submitted a supplemental report that reaffirmed his prior opinion. Judge Lima accepted Dr. Jarvis's opinion and concluded that Mrs. Drake's work at Kimberly Clark caused her asthma.

The Appeals Board notes that the opinion of Dr. Holmes, Kimberly Clark's medical consultant, contradicts the opinions of Dr. Anderson, Mrs. Drake's treating physician, and the Commission's impartial medical panel. The Appeals Board has carefully considered each of these opinions in light of the objective evidence regarding Mrs. Drake's work at Kimberly Clark and her development of asthma. The Appeals Board has also considered the analysis and explanation provided by these opinions, as well as the qualifications and expertise of the physicians. Based on these standards, the Appeals Board finds the medical panel's opinion persuasive and, therefore, finds that Mrs. Drake's work at Kimberly Clark caused her asthma.

¹ Section 34A-2-601 of the Utah Workers' Compensation Act authorizes appointment of impartial medical panels to consider the medical aspects of disputed occupational disease claims. Section 34A-2-601(1)(c) specifically provides that such a medical panel shall consist of "**one or more** physicians specializing in the treatment of the disease or condition involved in the claim." (Emphasis added.)

DISCUSSION AND CONCLUSIONS OF LAW

Kimberly Clark's preliminary challenge to Judge Lima's decision is that the findings of fact and conclusions of law contained therein are inadequate. The Appeals Board acknowledges that administrative adjudicative decisions must be sufficiently detailed to disclose the logical and analytical steps that lead to the ultimate findings of fact. The Appeals Board believes that Judge Lima's decision meets this standard. The decision carefully notes the evidence presented by the parties, including the conflict of Dr. Holmes' opinion with the opinions of Dr. Anderson and Dr. Jarvis. Judge Lima's decision then identifies the strengths of Dr. Jarvis's opinion and accepts that opinion as persuasive. The Appeals Board believes that Judge Lima's logic and analysis are clearly explained in the decision.

Kimberly Clark contends that Judge Lima erred in relying on the medical panel's opinion as proof that Mrs. Drake's asthma was caused by her work at Kimberly Clark. Although Kimberly Clark's argument on this point is not entirely clear, the Appeals Board understands Kimberly Clark to argue that, because it filed objections to the medical panel report, that report could not be considered as evidence unless a hearing was held on the objections. However, § 34A-2-601(2)(f)(i) of the Act permits, but does **not** require, hearings on objections to medical panel reports. In light of this statutory provision and the substance of the various medical reports that were already part of the evidentiary record, the Appeals Board concurs with Judge Lima's judgment that no hearing was necessary on Kimberly Clark's objections.

Kimberly Clark also contends that the medical panel's opinion is hearsay and, as such, cannot serve as the sole basis for a finding that Mrs. Drake's asthma was caused by her work at Kimberly Clark. The medical panel's report is not the sole basis for the finding that Mrs. Drake's work caused her asthma. Furthermore, § 34A-2-2601(2)(e) of the Act specifically permits the ALJ to base his or her findings of fact and decision on the medical panel's report. The cases cited by Kimberly Clark fail to support its argument. *Hoskings v. Labor Commission*, 918 P.2d 150 (Utah App. 1996) did not deal with a medical panel opinion, and *Hackford v. Labor Commission*, 358 P.2d 899 (Utah 1961) was decided under a statute that has since been amended. The Appeals Board therefore concludes that the finding in question is supported by sufficient competent evidence.

Next, Kimberly Clark argues that the medical panel's conclusion that Mrs. Drake's work caused her occupational asthma is incorrect because there is no evidence that Mrs. Drake's work exposed her to unsafe levels of any substance while working for Kimberly Clark. The Appeals Board believes that this argument misses the point of the medical panel's opinion. The medical panel did not conclude that Mrs. Drake was exposed to "dangerous" levels of any substance while working for Kimberly Clark. Instead, the panel concluded that Mrs. Drake had a personal susceptibility to even the low levels of exposure at Kimberly Clark. Under these circumstances, Judge Lima correctly concluded that Mrs. Drake's work at Kimberly Clark caused her occupational asthma.

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Finally, Kimberly Clark argues that liability for Mrs. Drake's occupational asthma should be apportioned between her work at Kimberly Clark and other causes. However, the medical panel report determined that **all** of Mrs. Drake's occupational asthma is attributable to her work at Kimberly Clark. Consequently, no apportionment is appropriate and Kimberly Clark is liable for all of Mrs. Drake's occupational disease benefits.

ORDER

The Appeals Board affirms Judge Lima's decision. It is so ordered.

Dated this 21ST day of December, 2007.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch